

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,) Case No.: 8:CV03-406
)
Plaintiff,)
)
v.) **MOTION IN LIMINE AND**
)
JOHN R. KOCH,) **REQUEST FOR DAUBERT**
)
Defendant.)
)

COMES NOW the Defendant, John R. Koch, by and through his Attorney, Matthew L. McBride, prays for an Order setting a Daubert hearing and thereafter excluding the testimony of Defendant's designated expert, Dr. Louise F. Fitzgerald. In support of his Motion the Defendant states and alleges as follows:

1. The Defendant has designated an expert, Dr. Louise F. Fitzgerald (hereinafter referred to as "Fitzgerald"), to offer opinions and conclusions to a "reasonable degree of scientific certainty" in this matter. (See Exhibit 1, Report of Dr. Louise Fitzgerald submitted by mail due to Protective Order (Filing 33) entered in this matter).
2. Fitzgerald is being offered to testify regarding:
 - A. Koch's patterns of behavior as compared to scientific research regarding various types of behavior in housing harassment;
 - B. Alleged tenant responses (i.e. compliance) as being a common response to sexual harassment;
 - C. An expectation of a high level of emotional distress in the complainants as a group;
 - D. General opinions and conclusions regarding sexual harassment in the area of housing.

3. The testimony of Fitzgerald which is expected to be offered at trial does not meet the admission or reliability requisites of Federal Rule of Evidence 702.

4. The testimony of Fitzgerald is more prejudicial than probative and does not meet the requisites of Federal Rule of Evidence 703.

5. Should the Court deny Defendant's request for a full Daubert hearing (which would likely necessitate a continuance of the November 15, 2004, trial date) the Defendant requests the Court deem the Motion submitted by this filing and the accompanying Memorandum Brief.

WHEREFORE, your Defendant moves this Court for an Order:

- A. Setting this matter for a full Daubert hearing;
- B. Prohibiting Fitzgerald from testifying at trial and excluding her report from evidence; and/or
- C. Limiting Fitzgerald's testimony only to the extent that it complies with Federal Rules of Evidence 702 and 703; and
- D. Any other relief this Court deems fair and equitable.

JOHN R. KOCH, Defendant

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CERTIFICATE OF SERVICE

I hereby certify that on October 7, 2004, I electronically filed the foregoing with the Clerk of the Court using CM/ECF system which sent notification of such filing to the filing: Laurie A. Kelly, Asst. US Attorney, 1620 Dodge Street, Suite 1400, Omaha, NE 68102-1506; and Rigel C. Oliveri, US Dept. of Justice, 10th & Pennsylvania Avenue, NW, Washington DC, 20530.

S/ MATTHEW L. MCBRIDE